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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,622	03/22/2001	Mark E. Cannon	CANN-0208	3984

7590 07/17/2002

Schmeiser, Olsen & Watts LLP
18 East University Drive, #101
Mesa, AZ 85201

EXAMINER

FLEURANTIN, JEAN B

ART UNIT	PAPER NUMBER
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2172

DATE MAILED: 07/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/814,622

Applicant(s)

CANNON, MARK E.

Examiner

Jean B Fleurantin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-64 are canceled. And 1-34 and 65-82 is/are pending in the application.

4a) Of the above claim(s) ____ is/are withdrawn from consideration.

- 5) ☐ Claim(s) ____ is/are allowed.

- 6) ☒ Claim(s) 1-34, 65-79 and 81 is/are rejected.

- 7) ☒ Claim(s) 80 and 82 is/are objected to.

- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: .

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DETAILED ACTION

1. Claims 35-64 are canceled.

Claims 1-34 and 65-82 are presented for examination.

Information Disclosure Statement

2. The references cited in IDS, PTO-1449, have been fully considered.

Drawings

3. The drawings filed on 03/22/2001 are approved by the Draftsperson under 37 CFR 1.84 or 1.152 as indicated in the "Notice of Draftsperson's Patent Drawing Review," PTO-948.

Double Patenting

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Claims 1-11 of the present Application Serial Number 09/814,622 read the same as claims 7, 8, 14, 17, 18, 19, 20, 21, 13, 16 and 17 consecutively of the US Patent Number 6,286,005.

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A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 12 and 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9 and 7 of Cannon (U.S. Patent No. 6,286,005). Although the conflicting claims are not identical, they not patentably distinct from

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each other because: claims 12 and 15 recite the same only method claims instead of apparatus claims in the application file number 09/814622 as claims 9 and 7.

The difference between claim 9 of the US No. 6,286,005 Patent and the claim 12 of the No. 09/814,622 application is follow as:

the patent claim 9, recites the steps of: a CPU;
a memory coupled to the CPU;
a database residing in the memory, the database comprising a plurality of person-by-person records which describe a series of television choices and decisions made by an identified sample audience in relation to a media vehicle, and wherein the database comprises a plurality of portions, with each of the plurality of portions including person-by-person records corresponding to a different time period and wherein the each of the plurality of portions includes a viewing index that indexes the person-by-person records for the corresponding time period;
a database mining engine residing in the memory, the database mining engine comprising utilizing the plurality of viewing indices to selectively access data from the database; and
a scoring mechanism residing in the memory and being executed by the CPU, wherein the scoring mechanism accesses the person-by-person records in the database via the database mining engine and provides a score for a proposed incremental change in an advertising schedule based on the person-by-person media-related records in the database by computing a overall exposure value for each individual member of the sample audience due to the proposed incremental change and summing the computed overall exposure values, the score thus

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quantifying the effectiveness proposed incremental change based upon the series of choices and decisions made by each individual member of the sample audience.

the application claim 12, recites the steps of: a CPU;
a memory coupled to the CPU;
a database residing in the memory, the database containing a plurality of person-by-person data files, the plurality of person-by-person data;
a database mining engine residing in the memory;
a data conversion mechanism residing in the memory, the data conversion mechanism comprising a mechanism for converting data from a first data format to a second data format; and
a graphical user interface residing in the memory and being executed by the CPU, wherein the graphical user interface provides a plurality of choices for optimizing the advertising schedule according to a plurality of indices.

The patent claimed a scoring mechanism residing in the memory and being executed by the CPU, wherein the scoring mechanism accesses the person-by-person records in the database via the database mining engine and provides a score for a proposed incremental change in an advertising schedule based on the person-by-person media-related records in the database by computing a overall exposure value for each individual member of the sample audience due to the proposed incremental change and summing the computed overall exposure values, the score thus quantifying the effectiveness proposed incremental change based upon the series of choices and decisions made by each individual member of the sample audience. Thus, the application

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claimed a data conversion mechanism residing in the memory, the data conversion mechanism comprising a mechanism for converting data from a first data format to a second data format would have been obvious to the patent claimed quantifying the effectiveness proposed incremental change based upon the series of choices and decisions made by each individual member of the sample audience.

The difference between claim 7 of the US No. 6,286,005 Patent and the claim 15 of the No. 09/814,622 application is follow as:

the patent claim 7, recites the steps of: an apparatus comprising:
a CPU;
a memory coupled to the CPU;
an advertising optimization mechanism residing in the memory and being executed by the CPU,
the advertising optimization mechanism iteratively modifying and scoring a base advertising schedule in order to achieve an optimal advertising schedule.

the application claim 15, recites the steps of: a program product comprising:
an advertising optimization mechanism, the advertising optimization mechanism iteratively modifying a base advertising schedule to achieve an optimal advertising schedule; and
signal bearing media bearing the advertising optimization mechanism.

The patent claimed an advertising optimization mechanism residing in the memory and being executed by the CPU, the advertising optimization mechanism iteratively modifying and scoring a base advertising schedule in order to achieve an optimal advertising schedule. Thus,

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the application claimed signal bearing media bearing the advertising optimization mechanism would have been obvious to the patent claimed an advertising optimization mechanism residing in the memory and being executed by the CPU.

Claims 13, 14 and 16-22 of the present Application Serial Number 09/814,622 read the same as claims 13, 17 14, 20, 14, 17, 21, 13 and 13 of the US Patent Number 6,286,005.

Claim Rejections - 35 U.S.C. § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 23-34, 65-79 and 81 are rejected under 35 U.S.C. 102(b) as being anticipated by Applicant admitted prior art - ("Related Art").

As per claim 23, Related Art teaches a method for advertising optimization (thus, effectively determine which shows are most favored by the desired target market advertising agencies and business have utilized the services of various different research and consulting firms, these firms purportedly have the ability to accurately identify which segment of the consumer population is most likely to be viewing which television program at any given time; which is readable as a method for advertising optimization) (see page 3, lines 7-11) as claimed, the method comprises the step of iteratively modifying a base advertising schedule according to at least one of a plurality of indices in order to achieve an optimal advertising schedule (thus, these research firms try to predict which viewers will be most responsive to various advertising campaigns based on the demographic make up of the viewing population based upon the weekly

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viewing information prepared and presented by the television viewing related research firm or agencies advertising campaign are born and terminated, however these advertising campaigns are most often the result of educated estimates well thought out probabilities and other experience based decision making processes it is most desirable to create an optimal campaign which effectively utilizes a finite combination of resources to communicate to the target audience; which is readable as iteratively modifying a base advertising schedule according to at least one of a plurality of indices in order to achieve an optimal advertising schedule) (see page 3, lines 11-19).

As per claim 24, Related Art teaches a method as claimed wherein the plurality of indices comprises an exposure valuation index, an audience valuation index, an exposure recency index, a response index and a cost index (thus, broadcast television advertising revenue is estimated to be in excess of \$30 billion per year which explains why advertisers care so much about television viewing, the most important part of the equation is to try and get the advertising message in front of the right group of television viewing consumers, i.e, matching the product with the desired market; which is readable as wherein the plurality of indices comprises an exposure valuation index, an audience valuation index, an exposure recency index, a response index and a cost index) (see page 2, lines 10-14).

As per claims 25, 27, 29-30 and 73-74, Related Art teaches a method as claimed wherein the step of iteratively modifying a base advertising schedule comprises using a weighted effective frequency method to score and compare a plurality of possible alternative advertising schedules

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(thus, the most important part of the equation is to try and get the advertising message in front of the right group of television viewing consumers, i.e, matching the product with the desired market; which is readable as iteratively modifying a base advertising schedule comprises using a weighted effective frequency method to score and compare a plurality of possible alternative advertising schedules) (see page 2, lines 12-14).

As per claims 26, 72 and 75, Related Art teaches a method as claimed wherein the step of scoring and comparing a plurality of possible alternative advertising schedules comprises the step of assigning a value to a modified advertising campaign based on previous or anticipated individual or collective advertising exposure (thus, these research firms try to predict which viewers will be most responsive to various advertising campaigns based on the demographic make up of the viewing population based upon the weekly viewing information prepared and presented by the television viewing related research firm or agencies advertising campaign are born and terminated, which is readable as wherein the step of scoring and comparing a plurality of possible alternative advertising schedules comprises the step of assigning a value to a modified advertising campaign based on previous or anticipated individual or collective advertising exposure) (see page 3, lines 11-15).

As per claim 28, in addition to the discussion in claim 23 above, Related Art further teaches a computer-implemented method as claimed, the method comprises the steps of (a) providing an advertising campaign containing a plurality of advertising spots (thus, identifying and implementing the most optimal advertising campaign for a given product using a given

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advertising medium is the lack of effective tools for scoring, which is readable as providing an advertising campaign containing a plurality of advertising spots) (see page 4, lines 11-12);

(b) identifying one of the plurality of advertising spots as a least valuable advertising spot (thus, although the practice of identifying target markets and developing advertising campaign attract those target consumers is a fairly developed practice, which is readable as identifying one of the plurality of advertising spots as a least valuable advertising spot) (see page 4, lines 2-3);

© removing the least valuable advertising spot from the advertising campaign (thus, to effectively determine which shows are most favored by the desired target market advertising agencies and business have utilized the services of various different research and consulting firms, which is readable as removing the least valuable advertising spot from the advertising campaign) (see page 3, lines 7-9);

(d) identifying a plurality of alternative options to add to the advertising campaign (thus, these firms purportedly have the ability to accurately identify which segment of the consumer population is most likely to be viewing which television program at any time, which is readable as identifying a plurality of alternative options to add to the advertising campaign) (see page 3, lines 7-9);

(f) scoring the modified advertising campaign (thus, implementing the most optimal advertising campaign for a given product using a given advertising medium is the lack of effective tools for scoring, which is readable as scoring the modified advertising campaign) (see page 4, lines 10-11);

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(g) repeating steps b, c, d, e, and f in order to achieve an optimal advertising schedule (see pages 3-4, lines 7-17).

As per claims 31-33, Related Art teaches a method as claimed wherein the step of scoring the modified advertising campaign comprises the step of using at least one index to score the modified advertising campaign (thus, implementing the most optimal advertising campaign for a given product using a given advertising medium is the lack of effective tools for scoring, which is readable as scoring the modified advertising campaign comprises the step of using at least one index to score the modified advertising campaign) (see page 4, lines 10-11).

As per claim 34, Related Art teaches a method as claimed further comprises the step of using a series of product usage data as an input for the response index (thus, these research firms try to predict which viewers will be most respective to various advertising campaigns based on the demographic make up of the viewing population based upon the weekly viewing information prepared and presented by the television viewing related research firm or agencies advertising campaign are born and terminated, which is readable as using a series of product usage data as an input for the response index (see page 3, lines 11-15).

As per claim 65, Related Art teaches a method as claimed for comparatively scoring a plurality of advertising options comprising the step of using a graphical user interface to evaluate a plurality of alternative advertising options (thus, networks and other interested organizations will continue to be limited in their efforts to produce effective advertising campaigns, which is

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readable as using a graphical user interface to evaluate a plurality of alternative advertising options) (see page 6, lines 12-15).

As per claims 66-68, Related Art teaches a method as claimed wherein the step of using a graphical user interface to evaluate a plurality of alternative advertising options comprises the step of distributing advertisements over time and space based on actual or anticipated individual or collective advertising exposure (thus, networks and other interested organizations will continue to be limited in their efforts to produce effective advertising campaigns, which is readable as wherein the step of using a graphical user interface to evaluate a plurality of alternative advertising options comprises the step of distributing advertisements over time and space based on actual or anticipated individual or collective advertising exposure) (see page 6, lines 12-15); also in page 3, lines 11 through 15, Related Art further teaches steps of these research firms try to predict which viewers will be most responsive to various advertising campaigns based on the demographic make up of the viewing population based upon the weekly viewing information prepared and presented by the television viewing related research firm or agencies advertising campaign are born and terminated.

As per claims 69-71, Related Art teaches a method as claimed wherein the step of assigning individual exposure values to each of the plurality of alternative advertising options according to the value of at least one of a plurality of individual demographic measurements comprises the step of displaying the individual exposure values of the at least one of a plurality of individual demographic measurements (thus, these research firms try to predict which viewers

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will be most respective to various advertising campaigns based on the demographic make up of the viewing population based upon the weekly viewing information prepared and presented by the television viewing related research firm or agencies advertising campaign are born and terminated; which is readable as wherein the step of assigning individual exposure values to each of the plurality of alternative advertising options according to the value of at least one of a plurality of individual demographic measurements comprises the step of displaying the individual exposure values of the at least one of a plurality of individual demographic measurements) (page 3, lines 11-15).

As per claim 76, in addition to the discussion in claim 65 above, Related Art further teaches the steps of determining a separate value for each exposure of each of a plurality of audience members to the advertising spot (thus, to effectively determine which shows are most favored by the desired target market advertising agencies and business have utilized the services of various different research and consulting firms, these firms purportedly have the ability to accurately identify which segment of the computer population is most likely to be viewing which television program at any given time; which is readable determining a separate value for each exposure of each of a plurality of audience members to the advertising spot) (see page 3, lines 7-11); and

summing the exposure values for each of the plurality of audience members to calculate the score for the advertising spot (thus, the advertising optimization process to a series of estimates and educated guesses when determining which campaign from among a group of

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similar campaigns will be most successful in accomplishing the desired goals, which is readable as summing the exposure values for each of the plurality of audience members to calculate the score for the advertising spot) (see page 4, lines 14-17).

As per claims 77-78, Related Art teaches a method as claimed wherein the step of determining a value for each exposure of each of a plurality of audience members to the advertising spot comprises the step of a using a weighted effective frequency method to determine a value for exposing each of a plurality of audience members to the advertising spot (thus, the most important part of the equation is to try and get the advertising message in front of the right group of television viewing consumers, i.e, matching the product with the desired market; which is readable as wherein the step of determining a value for each exposure of each of a plurality of audience members to the advertising spot comprises the step of a using a weighted effective frequency method to determine a value for exposing each of a plurality of audience members to the advertising spot) (see page 2, lines 12-14).

As per claims 79 and 81, the limitations of claims 79 and 81 are rejected in the analysis of claim 76 above, and these claims are rejected on that basis.

Claim Objections

7. Claims 80 and 82 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cannon US Patent No. 6,286,005 relates to the field of computer assists data manipulation and analysis.

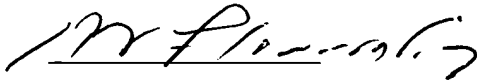
Conclusion

9. Any inquiry concerning this communication from examiner should be directed to Jean Bolte Fleurantin at (703) 308-6718. The examiner can normally be reached on Monday through Friday from 7:30 A.M. to 6:00 P.M.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Mrs. KIM VU can be reached at (703) 305-8449. The FAX phone numbers for the Group 2100 Customer Service Center are: ***After Final*** (703) 746-7238, ***Official*** (703) 746-7239, and ***Non-Official*** (703) 746-7240. NOTE: Documents transmitted by facsimile will be entered as official documents on the file wrapper unless clearly marked "***DRAFT***".

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 2100 Customer Service Center receptionist whose telephone numbers are (703) 306-5631, (703) 306-5632, (703) 306-5633.



Jean Bolte Fleurantin

July 1, 2002

JBF/



HOSAIN T. ALAM
PRIMARY EXAMINER